

## EXECUTIVE SESSION

NOMINATION OF WILLIAM J. RILEY TO BE CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

NOMINATION OF SARAH V. HART TO BE DIRECTOR OF NATIONAL INSTITUTE OF JUSTICE

NOMINATION OF ROBERT S. MUELLER TO BE DIRECTOR OF FEDERAL BUREAU OF INVESTIGATION

The PRESIDING OFFICER. The nominations will be stated.

The legislative clerk read the nominations of William J. Riley, from Nebraska, to be a Circuit Judge for the Eighth Circuit; Sarah V. Hart, from Pennsylvania, to be Director of the National Institute of Justice; and Robert S. Mueller, III, from California, to be Director of the Federal Bureau of Investigation.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we are going to have a series of votes on nominees, all of whom went through the Judiciary Committee this morning. Mr. Riley was the subject of nomination hearings before the Judiciary Committee on July 24. That was the fourth of five nomination hearings I scheduled in less than 3 weeks the Senate Judiciary Committee was allowed to have such hearings. Mr. Riley's was the fourth judicial nomination, the second nominee to a Court of Appeals considered by the Judiciary Committee since that date.

I mention this because the Senate Judiciary Committee, in the less than 4 weeks we have been allowed to have a full committee, has probably moved through judicial nominations faster than at any time in the past several years.

We will also have nominations of a Department of Justice nominee, also voted on this morning. The most important of all of these, I believe, is the nomination of Robert Mueller to be Director of the Federal Bureau of Investigation. We received his paperwork and completed it on July 24. We are now at August 2, again probably a speed record, to get this nomination before the Senate for confirmation. I thank the Senators on both sides of the aisle for making it possible to move that rapidly.

Mr. Mueller served as a Federal prosecutor in three different U.S. attorneys' offices, main Justice, in both Republican and Democratic administrations. He testified he either personally prosecuted or supervised the prosecution of just about every type of Federal criminal offense, including homicide, drug trafficking, organized crime, cybercrime, major fraud, civil rights, and environmental crime.

Mr. Mueller answered some very searching questions of Members on both sides of the aisle.

I think all of us have enormous respect for so many of the men and women in the FBI. They are the best trained and best motivated law enforcement agents anywhere in the world.

Many of us share also the concern that some within the hierarchy of the FBI let them down as a result of the problems with Waco, Ruby Ridge, the Hanssen spy case, and the foul-ups in the FBI lab.

I thought that whoever the next Director was owed it to all the wonderful men and women in the Bureau to make it better. I am convinced Robert Mueller can. I told him we were expediting his nomination, we were moving his nomination faster than any nominee has ever moved for such a prominent position, whether it has been a Republican President or Democratic President. It is because of our faith in him. We know he has a difficult job ahead of him.

I told him that all Americans look forward to his making sure the FBI is the preeminent law enforcement agency in the world and that he has the faith, and the hope, of 100 Senators. All 100 of us have an awesome responsibility. We represent a quarter of a billion people, and we have to make the judgment: Is the President's choice the best person?

I believe it is. I have that faith in him. I have the faith that Attorney General Ashcroft has done a very good job in his work, and I applaud Attorney General Ashcroft for what he has done. I applaud President Bush for his appointment. We will move forward on that.

Mr. President, the Senators from Nebraska made a powerful statement on behalf of William Riley of Nebraska to serve as a judge for the United States Court of Appeals for the Eighth Circuit. That is one of the reasons it moved so quickly. I see the former Governor of Nebraska, now a distinguished colleague in this Chamber, former Governor NELSON and now-Senator NELSON. I yield to Senator NELSON.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senator from Nebraska have 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I thank the chairman for his kind remarks and for his shepherding through his committee in record time the nomination of William Riley. I have known Bill Riley since our law school days at the University of Nebraska College of Law. He had a distinguished career at the University of Nebraska, serving as editor in chief of the Nebraska Law Review.

Rather ironically, his first job out of law school was clerking for one of the judges on the Eighth Circuit Court of Appeals, the same court which he seeks to preside in today.

He has been a member of a number of community and professional organizations, and in addition to his professional accomplishments, he has been active in his community, participating in the Boy Scouts for more than 25 years, serving as a juvenile diversion judge as a leader for young boys and girls charged with nonfelony crimes, and offering legal services to financially disadvantaged members of the community.

He possesses not only the legal intellect, the experience and the expertise to be an excellent judge, but he has also displayed throughout his entire career high ethical standards. It is a real pleasure for me to have the opportunity to comment so positively on Mr. Riley's qualifications and to thank the committee and the chair for moving this expeditiously.

It is a good indication that on a bipartisan basis, this Senate can act in a very timely manner on these nominations. I thank the chairman, and I thank the Chair.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the call of the quorum count against whatever time is still pending.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HAGEL. Mr. President, I strongly recommend Bill Riley to the Eighth U.S. Circuit Court of Appeals. I know that he will be an excellent appellate judge and will serve with distinction. He will bring to the bench the knowledge, experience and temperament he has acquired throughout his distinguished career.

I would like to thank the chairman of the Senate Judiciary Committee, Senator LEAHY, and ranking member HATCH for the expeditious manner in which they handled Mr. Riley's nomination.

Bill Riley received his undergraduate degree from the university of Nebraska in 1969 and graduated with distinction in 1972 from the university of Nebraska College of Law. Bill began his career by clerking for the Honorable Donald P. Lay on the Eighth Circuit Court of Appeals. That's right, the Eighth Circuit. Who would have known that almost 30 years later Bill would be nominated to the same court?

Since 1973 Bill has practiced law with the firm of Fitzgerald, Schorr, Barmettler & Brennan of Omaha, where he is now chair of the firm's litigation department. Bill has had a varied trial practice including business litigation, Federal securities law, U.S. copyright, trademark and patent suits, ERISA claims, corporate environmental pollution claims and various contract disputes.

Bill is board certified in civil trial practice by the National Board of Trial Advocacy, 1994, and an associate of the American Board of Trial Advocates. Bill is also a fellow of the American College of Trial Lawyers, which, as you know, is limited to 1 percent of lawyers in each State and only lawyers with 15 years of trial experience. From 1992 to 1994 Bill also served as chair of the Federal Practice Committee for the U.S. District Court.

Bill has found time to not only represent his clients, but to share his time and talents with other lawyers in Nebraska. Bill is a master attorney and charter member of the Robert M. Spire Inns of Court, which is a teaching organization for younger trial lawyers and law students. He has also been President of the Omaha Bar Association, a member of House of Delegates of the Nebraska State Bar Association, and past Chair of the Ethics Committee for the Nebraska State Bar Association. Over the years Bill has spoken at numerous legal seminars and conferences and his talents and time with other lawyers have contributed to the improvement of our legal system.

In addition to his active trial practice, Bill also teaches Trial Practice as an Adjunct Professor at Creighton University School of Law. He is married to Norma J. Riley and has three children, Brian, Kevin, and Erin.

Bill Riley is fully prepared for the challenges that lay ahead for the Eighth Circuit. He possesses the integrity, experience, intellect, and temperament to be an exceptional Federal judge. I strongly recommend his confirmation.

Mr. HATCH. Mr. President, I am also pleased that we will vote on a nominee who is extremely well-qualified to serve in the important positions of a circuit judge.

The judicial nominee is William Jay Riley, who has been nominated for the Eighth Circuit Court of Appeals. Mr. Riley graduated in 1972 from Nebraska Law School, where he was Editor in Chief of the Nebraska Law Review and was Order of the Coif. After graduation, he served as a law clerk for the court to which he has now been nominated before entering private practice. Mr. Riley will be a fine addition to the Eighth Circuit Court of Appeals.

I have examined the records of this nominee, and I support him without reservation. I urge all of my colleagues to vote to confirm Mr. Riley.

Mr. LEAHY. Mr. President, I am pleased to today to vote to confirm William J. Riley of Nebraska to serve

as a judge on the U.S. Court of Appeals for the Eighth Circuit. Mr. Riley was the subject of a nominations hearing before the Judiciary Committee on July 24th, which was the fourth of five nominations hearings I have scheduled since the Senate was allowed to reorganize on June 5. Mr. Riley's was the fourth judicial nomination considered by the Judiciary Committee since that date, and the second nominee to a Court of Appeals. The Judiciary Committee has considered and the Senate confirmed three judicial nominees in that period of time, and Mr. Riley will be the fourth, before the August recess begins.

William J. Riley, 54, is a native Nebraskan, and a graduate of the University of Nebraska and the University of Nebraska Law School. Mr. Riley served as a law clerk to the Honorable Donald Lay of the U.S. Court of Appeals for the Eighth Circuit, and went on to a distinguished career with the Omaha law firm of Fitzgerald, Schorr, Barmettler & Brennan. Over the course of his legal career he handled a variety of types of cases, including insurance defense, commercial litigation, and plaintiffs' personal injury, and his clients have ranged from individuals to large corporations. He has extensive litigation experience in both Federal and State courts.

Mr. Riley has been active in bar activities at the State and local level, and in other professional associations. He served as chair of the Nebraska State Bar Ethics Committee from 1996-1998, and in that capacity he was responsible for a non-discrimination amendment to the Nebraska Code of Professional Responsibility. He has also been a member of the Nebraska State Bar's House of Delegates for the last three years. He is on the Executive Council of the Omaha Bar Association, is its immediate past president, and in the past served as its treasurer. He also served as chair of the Federal Practice Committee of the U.S. District Court in Nebraska, and is active in the American College of Trial Lawyers and the American Board of Trial Advocates.

I am always glad to see qualified nominees who are supported by both home-State Senators, and Mr. Riley is such a nominee. In this case, both of the Senators from Nebraska, CHUCK HAGEL, a Republican, and BEN NELSON, a Democrat, strongly supported his nomination. Both contacted me to ask that he be scheduled for a hearing, and both came to his hearing and spoke convincingly on his behalf.

Senator HAGEL told the Judiciary Committee about Mr. Riley's, "knowledge, experience, and temperament," and that he knows Mr. Riley, "will be an excellent addition to the Eighth Circuit and will serve with distinction."

When Senator Ben Nelson introduced Mr. Riley at his hearing, he too attested to Mr. Riley's credentials, and underscored the nominee's support from both sides of the aisle, telling us that "Mr. Riley exemplifies the kind of

nominee that we would like to see put forth for these very important judgeships. He is not only a qualified person for this position, but he has earned broad bipartisan support and respect in Nebraska as well."

I know that both Senator NELSON and Senator HAGEL believe that this sort of bipartisan support is a crucial component of a successful nomination, and they followed through by working together with the White House to find a qualified candidate on whom they could agree. I hope the process that they undertook, like the one that recently produced the two District Court judges in Montana, demonstrates the advantages to such an approach.

I hope it makes clear that when the President works with Members of the Senate from both parties on the selection of qualified, consensus candidates to be judicial nominees, those nominations are likely to move more smoothly through the confirmation process.

The question is, Will the Senate advise and consent to the nomination of William J. Riley, of Nebraska, to be a U.S. Circuit Judge for the Eighth Circuit? On this question, the yeas and nays have been ordered, the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUE) is necessarily absent.

Mr. NICKLES. I announce that the Senator from Tennessee (Mr. THOMPSON) is necessarily absent.

I further announce that the Senator from New Mexico (Mr. DOMENICI) is absent because of a death in the family.

The PRESIDING OFFICER (Ms. CANTWELL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 270 Ex.]

YEAS—97

|           |            |             |
|-----------|------------|-------------|
| Akaka     | Durbin     | McCain      |
| Allard    | Edwards    | McConnell   |
| Allen     | Ensign     | Mikulski    |
| Baucus    | Enzi       | Miller      |
| Bayh      | Feingold   | Murkowski   |
| Bennett   | Feinstein  | Murray      |
| Biden     | Fitzgerald | Nelson (FL) |
| Bingaman  | Frist      | Nelson (NE) |
| Bond      | Graham     | Nickles     |
| Boxer     | Gramm      | Reed        |
| Breaux    | Grassley   | Reid        |
| Brownback | Gregg      | Roberts     |
| Bunning   | Hagel      | Rockefeller |
| Burns     | Harkin     | Santorum    |
| Byrd      | Hatch      | Sarbanes    |
| Campbell  | Helms      | Schumer     |
| Cantwell  | Hollings   | Sessions    |
| Carnahan  | Hutchinson | Shelby      |
| Carper    | Hutchison  | Smith (NH)  |
| Chafee    | Inhofe     | Smith (OR)  |
| Cleland   | Jeffords   | Snowe       |
| Clinton   | Johnson    | Specter     |
| Cochran   | Kennedy    | Stabenow    |
| Collins   | Kerry      | Stevens     |
| Conrad    | Kohl       | Thomas      |
| Corzine   | Kyl        | Thurmond    |
| Craig     | Landrieu   | Torricelli  |
| Crapo     | Leahy      | Voinovich   |
| Daschle   | Levin      | Warner      |
| Dayton    | Lieberman  | Wellstone   |
| DeWine    | Lincoln    | Wyden       |
| Dodd      | Lott       |             |
| Dorgan    | Lugar      |             |

## NOT VOTING—3

Domenici Inouye Thompson

The nomination was confirmed.

Mr. LEAHY. I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## NOMINATION OF SARAH V. HART TO BE DIRECTOR, NATIONAL INSTITUTE OF JUSTICE

Mr. LEAHY. Madam President, I am pleased to vote today to confirm Sarah V. Hart to be the Director of the National Institute of Justice, the research and development agency of the Department of Justice.

For the last 6 years, Ms. Hart has served as Chief Counsel of the Pennsylvania Department of Corrections, and before that as an Assistant District Attorney in Philadelphia for many years.

And it is not only her resume, but the strong support of former District Attorney from Philadelphia, my good friend Senator SPECTER, that makes it easy for me to vote to confirm Ms. Hart.

I hope that, once confirmed, Ms. Hart will take her stewardship of the National Institute of Justice seriously. The NIJ is tasked with undertaking objective, independent, non-partisan research on crime and justice issues. In order to do that it is crucial that NIJ remain independent from the political aims of the administration and the Justice Department, and remain committed to publishing its research no matter what the results.

Ms. Hart assured us, both at her hearing before the Judiciary Committee, and in answer to written questions submitted to her, that she understands this, and I look forward to seeing the results of the research conducted by NIJ under her supervision. In particular, I look forward to seeing the NIJ study on the role of racial bias in the federal death penalty carried out in a way that is true to its original intent, and not in a way that presumes before it even begins that racial bias is not a problem. And, again, at her hearing, and in writing afterwards, Ms. Hart assured us that would be the case.

Because of those answers, and, as I said, because of Senator SPECTER's support, I am pleased to be able to vote to confirm Sarah Hart.

Mr. HATCH. Madam President, Sarah Hart is an outstanding choice to be Director of the National Institute of Justice. She is an accomplished litigator who understands criminal justice issues. As a prosecutor in Philadelphia for 7 years, she assembled an impressive record of trial victories. And her subsequent experience litigating consent decrees made her an expert in issues related to the administration of criminal justice systems. Throughout her career, Ms. Hart has focused on the rights of victims of crime. I am pleased to support Ms. Hart's nomination, and I urge my colleagues to vote in favor of her confirmation.

Mr. LEAHY. Madam President, are these 10-minute rollcall votes?

The PRESIDING OFFICER. The Senator is correct.

The question is, Will the Senate advise and consent to the nomination of Sarah V. Hart, of Pennsylvania, to be Director of the National Institute of Justice? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUE) is necessarily absent.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) is absent because of a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

## (Rollcall Vote No. 271 Ex.)

## YEAS—98

|           |            |             |
|-----------|------------|-------------|
| Akaka     | Durbin     | McCain      |
| Allard    | Edwards    | McConnell   |
| Allen     | Ensign     | Mikulski    |
| Baucus    | Enzi       | Miller      |
| Bayh      | Feingold   | Murkowski   |
| Bennett   | Feinstein  | Murray      |
| Biden     | Fitzgerald | Nelson (FL) |
| Bingaman  | Frist      | Nelson (NE) |
| Bond      | Graham     | Nickles     |
| Boxer     | Gramm      | Reed        |
| Breaux    | Grassley   | Reid        |
| Brownback | Gregg      | Roberts     |
| Bunning   | Hagel      | Rockefeller |
| Burns     | Harkin     | Santorum    |
| Byrd      | Hatch      | Sarbanes    |
| Campbell  | Helms      | Schumer     |
| Cantwell  | Hollings   | Sessions    |
| Carmahan  | Hutchinson | Shelby      |
| Carper    | Hutchison  | Smith (NH)  |
| Chafee    | Inhofe     | Smith (OR)  |
| Cleland   | Jeffords   | Snowe       |
| Clinton   | Johnson    | Specter     |
| Cochran   | Kennedy    | Stabenow    |
| Collins   | Kerry      | Stevens     |
| Conrad    | Kohl       | Thomas      |
| Corzine   | Kyl        | Thompson    |
| Craig     | Landrieu   | Thurmond    |
| Crapo     | Leahy      | Torricelli  |
| Daschle   | Levin      | Voinovich   |
| Dayton    | Lieberman  | Warner      |
| DeWine    | Lincoln    | Wellstone   |
| Dodd      | Lott       | Wyden       |
| Dorgan    | Lugar      |             |

## NOT VOTING—2

Domenici Inouye

The nomination was confirmed.

Mr. LEAHY. Madam President, I move to reconsider the vote.

Mr. BROWNBACK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## ROBERT S. MUELLER, III, TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. LEAHY. Madam President, I have moved swiftly in the Judiciary Committee to consider and move forward the nomination of Robert S. Mueller, III, to be Director of the Federal Bureau of Investigation. His nomination was sent to the Senate on July 18 but his paperwork was not completed until July 24. Less than one week later, we held 2 days of hearings, on July 30 and 31, and made sure that the committee considered his nomination the same week, on August 2, in

order to ensure committee and Senate consideration of this important nomination before the August recess. The committee unanimously and favorably reported this nomination. I thank the Democratic and Republican members of the committee for their cooperation and attention in allowing this nomination to move forward on an expedited basis.

Mr. Mueller has had an outstanding career in law enforcement, serving as a Federal prosecutor in three different United States Attorneys' Offices and in Main Justice under both Republican and Democratic administrations. As he testified at his confirmation hearing, he has "either personally prosecuted or supervised the prosecution of just about every type of Federal Criminal offense, including homicide, drug trafficking, organized crime, cyber crime, major frauds, civil rights and environmental crime."

Mr. Mueller was the only witness at his hearings. The committee did not call other witnesses we are in the midst of intensive and ongoing FBI oversight hearings. These FBI oversight hearings were an integral part of the committee's preparation to consider the nomination of a new FBI Director, and Mr. Mueller's opening statement at his confirmation hearings specifically addressed significant issues raised in the prior hearings.

At the oversight hearing on June 20, 2001, the committee examined both outside oversight mechanisms and methods to restore confidence in the FBI. Witnesses included former Senator John C. Danforth, who investigated the events at Waco as Special Counsel to the Attorney General; the Honorable William H. Webster, former FBI and CIA Director, currently heading a review of FBI security in the aftermath of the Hanssen espionage case; Glenn A. Fine, current Inspector General of the Department of Justice; Michael R. Bromwich, former Inspector General of the Department of Justice; and Norman J. Rabkin, Managing Director, Tax Administration and Justice Issues, General Accounting Office.

At the oversight hearing on July 18, 2001, the committee considered the reform of FBI management with views from inside and outside the FBI. Witnesses included Raymond W. Kelly, former New York City Police Commissioner and Commissioner of the U.S. Customs Service; Bob E. Dies, FBI Assistant Director for Information Resources; Kenneth H. Senser, Acting FBI Deputy Assistant Director for Security Programs and Countermeasures; John E. Roberts, Unit Chief, FBI Office of Professional Responsibility; John Werner, former Supervisory Special Agent, FBI Office of Professional Responsibility; Frank L. Perry, Supervisory Senior Resident Agent, Raleigh, North Carolina, and former head of the Office of Law Enforcement Ethics at the FBI

Academy; and Patrick J. Kiernan, Supervisory Special Agent in the Law Enforcement Ethics Unit at the FBI Academy.

This nomination comes at a crucial juncture for the FBI. Mr. Mueller acknowledged at his confirmation hearing "that the Bureau's remarkable legacy of service and accomplishment has been tarnished by some serious and highly publicized problems in recent years. Waco, Ruby Ridge, the FBI lab, Wen Ho Lee, Robert Hanssen and the McVeigh documents—these familiar names and events remind us all that the FBI is far from perfect and that the next director faces significant management and administrative challenges." Mr. Mueller reminded us "that these problems do not tell the whole story of the FBI in recent years." He correctly observed that the FBI has had "astounding success during the same period" and that "the men and women of the FBI have continued, throughout this period of controversy, to do an outstanding job." Nevertheless, Mr. Mueller recognized that "highly publicized problems have, indeed, shaken the public's trust in the FBI." The Judiciary Committee aims to forge a constructive partnership with Mr. Mueller to get the FBI back on track. Congress sometimes has followed a hands-off approach about the FBI. Until the Bureau's problems are solved, we will need a hands-on approach for awhile.

The rights of all Americans are at stake in the selection of an FBI Director. The FBI has extraordinary power to affect the lives of ordinary Americans. By properly using its extraordinary investigative powers, the FBI can protect the security of us all by combating sophisticated crime, terrorism, and espionage. But unchecked, these same powers can undermine our civil liberties, such as freedom of speech and of association, and the right to privacy. By leaking information, the FBI can destroy the lives and reputations of people who have not been charged or had a trial. Worse, such leaking can be used for political intimidation and coercion. By respecting constitutional safeguards for criminal suspects, the FBI can help ensure that persons accused of Federal crimes receive a fair trial and that justice is served. Our paramount standard for evaluating a new Director is his demonstrated adherence to the Constitution as the bulwark of liberty and the rule of law. This is necessary to assure the American people that the FBI will exercise its power effectively and fairly.

Throughout his career and in his testimony at his confirmation hearing, Mr. Mueller has showed his commitment to these principles. He testified, "I care deeply about the rule of law. In a free society a central responsibility of government. I believe, is to protect its citizens from criminal harm within the framework of the Constitution." He stressed that "the FBI is vital to the preservation of our civil order and our civil rights."

This was the sixth time the Judiciary Committee has held confirmation hearings for an FBI Director since 1973, when the first nomination was made under the 1968 law requiring Presidential appointment and Senate confirmation of the FBI Director.

That first nomination hearings, along with enactment in 1976 of the 10-year term for the Director, were conducted against the backdrop of Watergate. The nominee then was L. Patrick Gray, an Assistant Attorney General who became Acting Director after the death of J. Edgar Hoover in 1972. Gray held that position when the Watergate break-in and cover-up occurred. At the time of his confirmation hearings in early 1973, very little of the scandal was known beyond the reporting of the Washington Post. Patrick Gray had met with the President's Counsel John Dean, so this committee prepared to subpoena Dean and expected strong resistance in the name of Executive privilege. Other events then took over, the Gray nomination was withdrawn, and he later admitted personally destroying evidence. Those were dark days for the Bureau.

*Lost confidence in the FBI is not just a PR problem.* The challenges facing the next FBI Director are different from the issues of abuse of power three decades ago but are just as tough. The American public has lost some confidence in the Bureau. This is not just a PR problem. This erosion of public trust threatens the FBI's ability to perform its mission. Citizens who mistrust the FBI will be less likely to come forward and report information about criminal activity. Judges and jurors will be less likely to believe the testimony of FBI witnesses. Even innocent or minor mistakes by the FBI in future cases may be perceived in a sinister light that is not warranted. Since FBI agents perform forensic and other critical work for many law enforcement agencies on the Federal, State and local levels, the repercussions of this decline in public confidence in the FBI has rippled far beyond Federal criminal cases.

In his confirmation testimony, Mr. Mueller took special note of the impact within the FBI: "The shaken trust, in turn, inevitably affects the morale of the men and women who serve at the Bureau." He pledged to "make it my highest priority to restore the public's confidence in the FBI, to re-earn the faith and trust of the American people."

*Constructive oversight is necessary.* For too long, the Congress has taken a hands-off approach to the FBI. Problems have been allowed to fester. The Congress has a duty to the American people to conduct systematic and ongoing oversight of the FBI to ensure it meets the highest standards of professionalism, competence, and adherence to the law. Constructive, bipartisan oversight of the FBI can greatly improve its effectiveness. While reviews by Inspectors General and other out-

side experts are important—the ultimate test is accountability to the people through the Congress.

Three principles guide the Judiciary Committee's oversight of the FBI. First, our task is to rebuild confidence in the FBI as a vital national asset, not to tear it down.

Second, when we look at mistakes, we do so as an essential first step to find and fix their cause. The purpose is not to detract from the outstanding work of the dedicated professional men and women of the FBI who go to work every day to keep this nation safe. Highly publicized mistakes have created an impression that the Bureau is unmanageable, unaccountable and unreliable. Unfortunately, these mistakes detract from the outstanding performance of FBI Special Agents and other employees who handle the most complex criminal, terrorist, and counter-intelligence cases day in and day out. Only by fixing those problems, and continuously improving the organization, will the tremendous work done by so many agents and employees get the full credit it deserves.

Finally, our efforts will be to reach bipartisan solutions that make the FBI better able to fulfill the weighty mission we demand of it. Working with the new Director and the Attorney General, I am convinced we can achieve these goals.

Several Members discussed with the nominee his views on providing information to Congress. In response to Senator Schumer's concern about a request he had made for documents from the FBI on a policy issue regarding records of gun sales, Mr. Mueller said:

I do believe that the Bureau should do everything possible to accommodate the requests of Congress. If there are documents that relate to the policy, that are generated by the FBI, then I believe the Department of Justice and the FBI should do everything possible to accommodate the request of Congress, consistent with its law enforcement responsibilities.

Mr. Mueller repeated this assurance when Senator Specter cited a number of problems in getting FBI documents over the years. Mr. Mueller stated, "I absolutely agree that Congress is entitled to oversight of the ongoing responsibilities of the FBI and the Department of Justice." He added that "it is incumbent upon the FBI and the Department of Justice to attempt to accommodate every request from Congress swiftly and, where it cannot accommodate or believes that there are confidential issues that have to be raised, to bring to your attention and articulate with some specificity, not just the fact that there's an ongoing investigation, not just the fact that there's an ongoing or an upcoming trial, but with specificity why producing the documents would interfere with either that trial or for some other reason or we believed covered by some issue of confidentiality."

Mr. Mueller cited two cases, BCCI and BNL, when he was head of the Justice Department's Criminal Division

where an accommodation was reached to provide information to Congress on pending cases. He said he "would expect that we would always have that ability to accomplish the accommodation that is necessary for Congress to discharge its responsibilities in oversight." Questioned further, Mr. Mueller said "congressional oversight is appropriate, even if there is a pending prosecution or investigation" and "it is incumbent upon us to attempt to accommodate the necessity of the oversight committee to have the information it needs." He went on to say there may be "the assertion of executive privilege" and "where there is a clash or disagreement between the executive and the legislative, I believe the courts are the final arbiters."

Senator GRASSLEY expressed concern about a deliberate pattern of denying, delaying or simply not complying with legitimate requests and asked the nominee how he would change the Bureau's penchant for denying legitimate access to documents and witnesses. Mr. Mueller replied that if there is an investigation by a committee of Congress, he would "expect to have somebody responsible for assuring that we are responsive on that particular issue" and, where "some confidential interests" are implicated, "to state honestly and directly to the committee what should be done to accommodate the committee's request." He would like to "foster a change in the perception so that you do have the feeling at the end of the day that the FBI has been responsive."

Accommodation, rather than obstruction, of congressional requests for documents will be Mr. Mueller's goal. That is a positive promise.

*Three core problems:* The questions being asked about the FBI are directed at three interrelated issues: the Bureau's security and information technology problems, management problems, and insular "culture." The committee is in the midst of examining each of these areas at oversight hearings that began in June shortly after I became chairman.

*Serious security breakdowns and information technology inadequacies:* In the national security field, our country depends on FBI counterintelligence to protect the most sensitive intelligence, military, and diplomatic secrets from foreign espionage. The espionage case of Robert Hanssen demonstrates, however, that the FBI's own security and the investigation of espionage in its own ranks failed dramatically, with enormous potential consequences. What is more disturbing is how many red flags the FBI apparently overlooked during the many years that Hanssen was a spy. The reviews by the Inspector General and Judge Webster will not be done for many months, but testimony before the Committee in July shed light on how this spy was able to operate with impunity for so long. We were told that there were no less than 15 different areas of security

at the FBI that were broken and needed to be "bolstered, redesigned, or in some cases established for the first time."

The committee intends to continue its oversight work in this area, including closed sessions with the Director and other FBI officials to consider classified aspects of FBI information security.

One of the things Director Freeh did after Hanssen's arrest was to require periodic security-screening polygraph exams for FBI agents with access to the most sensitive information. Reviews are currently underway that focus on the benefits and risks of the polygraph as a security screening tool. If the FBI needs wider use of polygraph exams, there must be firm assurances of consistency in their administration, application and quality controls. In response to a question from Senator HATCH, Mr. Mueller said he is willing to continue the requirement for polygraph exams for managers handling national security matters. He confirmed that he had already completed that polygraph exam. He stated his belief that "you don't ask people to do that which you're unwilling to do yourself."

The FBI needs to fully join the 21st century. This is the information age, but the FBI's information technology is obsolete. The committee has been told that the FBI's computer systems have not been updated for over 6 years; that more than 13,000 desktop computers are so old they cannot run on today's basic software; that the majority of the smaller FBI field offices have internal networks that work more slowly than the Internet connections many of us have at home; and that the investigative databases are so old that FBI agents are unable to store photographs, graphical or tabular data on them.

Hard-working, dedicated FBI agents trying to fight crime across the country deserve better, and they should have the computer and network tools that most businesses take for granted and many Americans enjoy at home.

To the credit of former FBI Director Louis Freeh, in the last year of his tenure, he reached outside the Bureau for fresh management perspectives and expert advice. He recruited two new senior FBI officials, who were not career agents but were brought into the FBI from IBM and the CIA to develop plans for addressing the Bureau's security and information technology problems. The Director should continue to look for the best advice from outside the Bureau, while at the same time identifying leaders within the Bureau who are committed to necessary reforms. In the months ahead the committee will watch closely to see if the Director backs up the proponents of reform when they face opposition from Bureau officials wedded to the status quo.

At his confirmation hearings Mr. Mueller placed great emphasis on the need "to upgrade the information systems and to upgrade the systems and

procedures to integrate modern technology. Every FBI manager, indeed, every agent needs to be computer literate, not a computer programmer, but aware of what computers can and cannot do to assist them with their jobs."

When asked by Senator DEWINE how quickly he would be able to fully implement the FBI's information technology plan, Mr. Mueller said the Bureau has "a 3-year technology update plan called Trilogy, and the goods news about that is that it's laying the foundation, whether it be the networks or the software, the hardware, the user interfaces for bringing the FBI agent into the modern era." He added that the "not-so-good news is that once we have that structure in place, there's a lot more to do." Mr. Mueller cited in particular "the storage and each retrieval of documents, of imaging documents when they come in immediately so that you have ultimately what is referred to in the private sector as a paperless office."

The security and information technology problems facing the FBI are not problems of money. The Congress has poured money into the FBI. They are management problems and they can no longer be ignored. Mr. Mueller has seen the FBI up close for many years—as Acting Deputy Attorney General, as Assistant Attorney General, and in three United States Attorneys' offices. The committee wanted to know what management objectives he would bring to the job, based on his past experience, and what other resources he would draw on to bring about needed changes.

Mr. Mueller spelled out his overall "management priorities" in his opening statement to the committee: "Underlying these priorities is my belief that the core asset of the FBI is its employees. I am committed to providing the leadership, and management, and energy necessary to enable these talented and dedicated people to do their jobs as effectively as possible." His first priority will be "to recruit, encourage, and select the highest quality leadership" resulting in "a management team that reflects the diversity of our society." Second to "review carefully management structures and systems" with special concern "about the span of control, the degree of decentralization, and whether responsibilities are clearly defined." Third is to rebuild the information infrastructure, as discussed earlier. Fourth is for the FBI "to review continuously its priorities and its allocation of resources" in order to "anticipate the challenges the Bureau will be facing 10 and 20 years into the future and prepare now to meet those challenges." Fifth is to "develop the respect and confidence of those with whom it intersects, including other law enforcement agencies, both domestic and international, and Congress."

Mr. Mueller added that he would "move quickly on administrative and management changes." Personnel

changes would be made first. Changes in structure and span of control would take more time, with input from a management consultant study commissioned by the Attorney General, other pending reviews, and ideas from other executives who rule large organizations.

The management structure at the FBI may simply have become too unwieldy, when the Bureau was smaller, its headquarters could reasonably attempt to keep track of the activities in its field offices. In recent years, however, the Bureau has grown tremendously with 56 field offices, plus 44 overseas legal attaches. It may not be possible for headquarters to effectively monitor field activities. The belated production of documents in Oklahoma City bombing case happened despite 16 separate orders from headquarters for pretrial production of those documents. Similar problems arose in the Wen Ho Lee case, where a field office disregarded instructions from headquarters. At the FBI oversight hearings Former New York Police Commissioner and Customs Commissioner Ray Kelly testified that a regional structure makes a large law enforcement organization more manageable.

At the confirmation hearings I asked Mr. Mueller whether this is something that would be considered. He replied, "Absolutely," and said he "did read Commissioner Kelly's testimony with some interest." He added, "I would look at that proposal with a view to whether it goes toward affording appropriate span of control." He went on to stress the need "to have the technological infrastructure be such that I would be able to review, as would the intermediate managers, review the work on critical cases or critical classes of cases by turning on your computer and using the mouse to click on a series of cases to see what has been done the last 3 days, what you expect to be done in the next 30 days."

Senator KOHL asked if it was realistic to expect big changes quickly, given the size of the FBI with more than 27,000 employees and a budget of more than \$3.5 billion. Mr. Mueller replied, "I do think that one can relatively quickly, over several weeks/months, learn the institution and learn the people, learn what are the largest problems, whether it is span of control, what are the larger personnel problems and in a relatively short time. And I don't want to specify any particular time, but certainly within months start to make substantial changes." He added that making "the most critical decisions" about positions of leadership "is not an extraordinarily time-consuming undertaking." Changing the organizational structure and the span of control "will take longer time than perhaps making some personnel changes."

I asked the nominee what management problems caused the FBI's failure to produce documents in the McVeigh case. Mr. Mueller cited two contrib-

uting factors. One was "the lack of an infrastructure to have all documents coded and readily available" in a case with "a huge volume of documents spread across any number of offices in this country and internationally." Second was "accountability" and "overlapping areas of responsibility in various areas of the FBI" which make it "very difficult to have accountability." There was "perhaps a failure of accountability down to the lowest levels." Mr. Mueller said he would address this issue: "It has been my practice in the past to identify areas of responsibility, put somebody in charge of that area of responsibility and hold that individual accountable for discharging that responsibility. And I want to make certain that where that is done within the Bureau, there is clear accountability."

I also asked Mr. Mueller to discuss the time of his own reporting to the Attorney general on the document production problem in the McVeigh case. He testified: "Turning to the issue of the time line, upon hearing about the issue, I heard about it I believe on a Wednesday afternoon. On that Friday, the decision was made to put over the execution of Mr. McVeigh. When I heard about it on a Wednesday afternoon, the initial response, and I believe I talked to the prosecutor that night or the following morning, the initial thrust of what I was concerned about is to make certain that defense counsel were aware of this immediately so that defense counsel could make its or their own interpretation of whether these documents contained any Brady or exculpatory information."

Mr. Mueller also testified:

I was not aware, I don't believe, at the outset the extent of the commitment to turn over documents until the following morning. And I actually had brief discussions with Mr. Ashcroft's staff on Wednesday afternoon, I think it was, about it, but I did not have an opportunity to fully brief the Attorney General until the following day, at which point I did have an opportunity to brief him more expansively that the fact that I had mentioned previously to his staff, that there was an issue. And, thereafter, the discussions ensued as to what was the appropriate response we would take to the fact that these documents had come to our attention.

Both Senator FEINGOLD and Senator SESSIONS raised concerns about the FBI's failure to provide information to prosecutors in the 1963 Birmingham bombing case. Mr. Mueller testified that he shared this concern. In cases "involving national security information that may bear on a particular prosecution," there may be "valid reasons for keeping certain of the information from the prosecutors that go into court," but mechanisms exist "to assure that there is no Brady information, exculpatory information that should be given to the defense." He added that the day-to-day problem of FBI inability to produce documents quickly "is attributable in part to its antiquated filing system." He said his objective is to have an FBI system to

image documents into a database to make them "immediately accessible so that you do not have the problem such as you saw with the prosecution of the McVeigh documents."

Mr. Mueller expressed his willingness to reach out to experts wherever they may be found, including in and outside the FBI to address management and infrastructure problems. He stated that he has "reached out, and will continue to reach out" to "persons who have been in the Bureau previously" and "persons in large corporations, CEOs, who have run successful corporations to try to identify those management structures that worked well and would work best at the FBI." He also is "looking forward to receiving the report of the consulting firm that is charged with looking at the FBI from top to bottom." Mr. Mueller added that he "would welcome the insight from any other individuals, assuming it is a combination of individuals with experience in management and private industry, law enforcement, and other walks of life."

With regard to FBI personnel management, Mr. Mueller agreed that promotion of diversity within the FBI to ensure that the FBI employment level is reflective of America is a priority. The FBI should be more sensitive to recruiting and training minorities. In addition, Mr. Mueller acknowledged in response to questions from Senator DURBIN that "racial profiling is abhorrent to the Constitution, it is abhorrent in any way, shape or form. And I would make certain that from the first day an FBI agent sets foot in the academy in Quantico that that refrain is repeated as part of the training, and as one goes through the ranks, continuous retraining, and focus on the fact that the FBI, in order to be the preeminent law enforcement organization in the country if not in the world, has to have an unblemished record with regard to addressing and strongly attacking any indication of racial profiling."

It is especially important to understand how the nominee views the FBI Director's relationship with the Attorney General in the overall management structure at the Department of Justice. Too often in the past Directors have had the final word on management of the Bureau. Of course, there are legitimate concerns about political interference with investigations, as Watergate demonstrated. The FBI Director is not, however, unique in having to resist with interference. Both the FBI Director and the Attorney General have that duty, and they should work together to ensure the integrity of both investigations and prosecutions. The FBI Director should be part of the Justice Department's leadership team.

I asked Mr. Mueller under oath at his confirmation hearing to give his commitment that if he were ever pressured politically by the Republications or the Democrats to affect an investigation, that he would resist that pressure with

all his might. Mr. Mueller replied, "Absolutely."

I questioned the nominee on how he sees the FBI Director's relationship with the current and subsequent Attorneys General, since he may work with more than one Attorney General over his 10-year term. Mr. Mueller testified:

This is the most difficult issue I think that a director of the FBI has to address, in that the FBI has its ultimate responsibility to the American people to be independent, to pursue its investigations without any favor to one political party or the other or to any particular individual, no matter how powerful that individual should be. And on a day-to-day basis, on the other hand, I do believe that, absent extraordinary circumstances, the Director of the FBI, and the FBI, is a component of \* \* \* the Department of Justice, reporting to the Attorney General. And there should be a close relationship on, for instance, policy matters, and there is a requirement in almost every matter that the Attorney General be apprised of that. And, again, I report, in essence, to the Attorney General and then to the President.

There may be circumstances—there have been in history—where it is important for the FBI and the Director of the FBI to put \* \* \* the interests of the people above that reporting structure. And I hope that I do not have occasion to meet such a situation, but there is the possibility, perhaps even the probability, that I will. If there is an occasion where I believe that for reasons of political influence or the influence of the powerful that the Bureau is asked to do something that is inappropriate, wrong under the Constitution, that under those circumstances I have an obligation to find a way to address that. It may be going elsewhere in the administration. It may be going to Congress. It may be going to the American people. I don't know what the exact answer is. But I hope I do not have to face that situation because it will be the hardest decision that, should I be confirmed as Director, would have to make.

I consider this answer to be a model for all Mr. Mueller's successors as FBI Director.

Senator SPECTER and Senator SESSIONS asked the nominee what he would do if he had information that the Attorney General was taking an improper law enforcement action for political reasons. Mr. Mueller replied that he would "go to the Attorney General first before I made perhaps a disclosure to Congress." He would also "explore other alternatives or a variety of alternatives in order to make certain that justice was done." Questioned further on the second day of the hearing, Mr. Mueller said that "if it was a matter of substantial consequence" and he "was turned down by the Attorney General, I would think I'd have an obligation to inform the Senate of that, and produce those documents."

In the discussion of this issue, reference was made to a memorandum from FBI Deputy Director Esposito to FBI Director Freeh, dated December 9, 1996. In that memorandum Mr. Esposito said Lee Radek, chief of the Justice Department's Public Integrity Section, had made a comment to Director Freeh. According to the Esposito memorandum, Mr. Radek had commented that there was a lot of "pressure" on him regarding a case before

the "Attorney General's job might hang in the balance." The accuracy of this memorandum has been seriously questioned. At a Subcommittee hearing on May 24, 2000, Mr. Radek testified that he felt pressure from the Attorney General to do a good job, but that there was no connection in his mind between any such pressure and whether or not the Attorney General would continue in her job as Attorney General during the second Clinton Administration. Mr. Esposito's second-hand account has not been corroborated. This episode should be a warning of the risk that lower level officials may seek to sabotage political appointees. The use of this memorandum as a straw man for questioning the nominee should not imply agreement by other Members to its credibility.

The nominee was also asked to consider the possibility that he and the Attorney General might decide to withhold information on national security matters from a President if the President were the target of a criminal investigation. In response to a question from Senator SPECTER, Mr. Mueller stated, "There may be an occasion where it's possible, yes." Mr. Mueller also explained that, if disclosing "information to a target would hamper or undercut the investigation," he would expect "that any decision as to whether or not that information should be disclosed to the target would be made in conjunction with the Attorney General. But the decision may well be that that information should not be disclosed." Mr. Mueller went on to state, "If it is national security information, on the other hand, that bears upon the security of the United States, I think we have an obligation to assure that anything within those materials that bears on the national security finds its place in the national security structure."

I am troubled by an apparent inconsistency in this response, because the President bears full and ultimate responsibility for the national security structure and all the diplomatic, military, intelligence, and other actions necessary to protect the nation's security. An FBI Director must find a way to accommodate the legitimate needs of the President to exercise his constitutional responsibilities for national security, just as it accommodates the needs of the Congress to exercise its oversight responsibilities.

The FBI "culture" needs an overhaul. The committee is receiving testimony in our oversight hearings showing that, too often, the independence that is part of the FBI's culture has crossed the line into arrogance. Senator Danforth expressed concern to this committee about entrenched executives at the FBI who have created a closed and insular culture resistant to disclosure of mistakes and to reforms. His concern was echoed in testimony the committee heard from experienced FBI Special agents, who told us of a "club" mentality among some Bureau

executives who resist criticism or change that threatens their careers. Senator Danforth recommended that the new director should be prepared to clean house to the extent necessary to implement needed changes.

If there is one message that a new Director should get from recent problems, it is that FBI executives need to be more willing to admit their mistakes. Too often their response is to protect the Bureau from embarrassment or shield self-serving executives from criticism and needed change. As Senator Danforth testified, the FBI helped fan the flames of conspiracy theories at Waco by covering up evidence that it used pyrotechnic rounds, even though they had nothing to do with starting the fire. The present FBI culture makes it easier to cover up rather than admit a mistake. A new Director must understand that this type of conduct risks a far greater cost in the lost of public confidence, as compared with admitting mistakes when they occur.

Let me cite one example that occurred just a week ago. In its recent weekly newsletter for FBI employees, the FBI reported on the Judiciary Committee's July 18 hearing. But the newsletter reported on the Testimony of the two senior FBI agents, who told us about what they were doing to fix the security and information technology problems at the FBI. Their testimony was also the only testimony posted on the FBI website. Yet, the testimony of the four other FBI agents who testified about problems of a double standard in adjudicating discipline and about retaliation within the FBI was ignored—not mentioned in the newsletter nor posted on the Website. Ignoring the testimony will not make it disappear. This kind of attitude makes it much harder to make the changes that need to be made. If the FBI tries to suppress information that things have gone wrong, it will never get them fixed.

When I asked Mr. Mueller at his confirmation hearings about this newsletter, he stated "that it is important that everybody in the Bureau look at both the good and the bad in order to address it." After my remarks at the nomination hearings, FBI Headquarters decided to send the testimony of the four other FBI agents to the field offices. That was the right decision.

In his opening statement, Mr. Mueller discussed the broader concerns about the FBI's culture:

[A]s we examine the mistakes of the past, we must be resolved to respond quickly and forthrightly to the mistakes of the future. Three elements are critical to a proper response: First, we must be willing to admit immediately that a mistake has occurred. This includes providing timely information to the appropriate committees of Congress. And for matters involving cases and courts, immediately informing the court and defense counsel as appropriate. Failure to admit one's mistakes contributes to the perception of institutional arrogance.

Second, those responsible for the mistake must be held accountable. This does not mean punishing employees for simple errors in doing their jobs. Nobody is perfect, and we want to encourage people to come forward immediately when mistakes are made, but we must hold people accountable, and we cannot tolerate efforts to cover up problems or to blame others for them. If confirmed, I will be committed to inculcating a culture which understands that we all make mistakes and that we must be forthright and honest in admitting them and correcting them as quickly as possible. We must tell the truth and let the facts speak for themselves. The truth is what we expect in our investigations of others, and the truth is what we must demand of ourselves when we come under scrutiny . . . .

And, third, every significant mistake must be examined to determine whether broader reform is necessary. We must learn from our mistakes or we will be bound to repeat them.

I questioned Mr. Mueller about two recent cases where mistakes have not been rectified. Documents provided to the Committee on the Justice Department's January 2001 decision on Ruby Ridge discipline revealed that discipline given to some FBI agents in January 1995 was incorrect. Another example was a CIA officer who was initially suspected of espionage before the FBI discovered that Hanssen was the real culprit. The CIA officer was cleared and allowed to return to his work, but the FBI did not formally notify him or his family that he is no longer suspected of any wrongdoing. Mr. Mueller agreed to look into these matters.

In other questioning of the nominee, Senator SESSIONS observed that there has been a concern in the FBI that if somebody made an honest error, the hierarchy would be too hard on them. He saw this as a factor in the lack of willingness to come forward with and admit an error. Mr. Mueller agreed and said "the bedrock principle ought to be to tell the truth . . . the sooner the better." Senator SPECTER asked Mr. Mueller what his response would be when an FBI official deliberately does not correct a mistake in testimony to Congress or deliberately does not disclose important information. He replied that "absolutely anybody who lies and deserves the strongest sanction, up to and including dismissal from the FBI."

Another concern about the FBI culture is the Bureau's treatment of local law enforcement agencies. Senator DEWINE asked how the nominee intended to set the right tone for the FBI in this area. Mr. Mueller replied that one way would be "outreach" to address any complaints such as stealing an investigation. He also stressed that "the FBI can and should allow others to trumpet its successes." He stated, "In my own mind, the praise that makes the biggest difference is that that comes from others with whom you've worked. And my hope would be that we could operate on that principle."

Senator GRASSLEY expressed concern about a culture of arrogance at the

FBI, exemplified by the practice of holding press conferences in very high-profile cases before the investigation is complete. Mr. Mueller responded that he is "not a great one for press conferences" and that in cases where the FBI assists local law enforcement "I would much rather have, at the conclusion of an investigation, that the state and locals stand at the podium, do the press conference, and thank the FBI."

Senator SPECTER, citing an unanswered letter he sent to Director Freeh about leaks in the press regarding an alleged investigation of Senator TORRICELLI, asked what action the FBI Director could take to preclude these types of leaks. Mr. Mueller replied, "Generally speaking . . . I abhor leaks. They are detrimental to the mission of the FBI. They are detrimental to most particularly the individual who is the subject of them. I think you set a standard of very harsh treatment when an investigation is conducted and somebody is determined to have leaked." He pledged to "do everything in my power to assure" that Justice Department regulations on public statements "are abided by and that any breach of those regulations is treated firmly." He also agreed "to determine whether there is predication" for an inquiry on the leaks regarding Senator TORRICELLI and, if there is predication, to "conduct an inquiry."

To ensure full investigation of mistakes, I support the change made by the Attorney General to give the Justice Department's Inspector General full authority over the FBI. The Inspector General statute should be amended to make this regulatory change permanent. Witnesses at the oversight hearings expressed concern that the Inspector General will not get the same cooperation from FBI personnel as a separate Inspector General for the Bureau. The Director's responsibility includes ensuring that FBI personnel cooperate fully with the Inspector General. One former Justice Department Inspector General testified that, when his office sought FBI personnel to work on a review of FBI performance, experienced Agents were reluctant to participate and declined to have their names listed in the report. Agents did not view this work as "career-enhancing." A Director must make clear that FBI executives should reward—not discourage—participation in Inspector General, and other oversight, investigations of Bureau performance.

The committee has heard disturbing testimony about retaliation against FBI Agents who are tasked to investigate their colleagues or who discuss issues with the Congress, either directly or through cooperation with the General Accounting Office, which assists in congressional oversight. It is important that a new Director send a clear message to FBI employees that he will not tolerate retaliation against agents who conduct internal investigations or who bring information about wrongdoing to the Congress directly.

In response to a question from Senator DURBIN about his proposal for a separate FBI Inspector General, Mr. Mueller noted the Attorney General's recent action and said he sees the Inspector General from the Department of Justice "working very closely with the FBI Office of Professional Responsibility to allocate responsibilities." He added, "If I were the Attorney General I might have some concern about a separate Inspector General feeding the perception that the FBI was a separate institution accountable only to itself. And I'm not certain in my own mind whether or not what the accountability you seek cannot be discharged by an Inspector General with appropriate personnel in the Department of Justice, as opposed to establishing another Inspector General in the FBI."

Senator DURBIN asked what steps the nominee would take to ensure that there will be a healthy relationship with an Inspector General in the management of the FBI. Mr. Mueller replied that the FBI Director should meet weekly or every other week "with the Inspector General to review the cases, in the same way that the Attorney General meets with the Inspector General." Mr. Mueller also stated, "To the extent that the Inspector General in the past was hampered by having to go to the Attorney General and specifically requesting authority, that has been removed."

Internal investigations must also lead to fair and just discipline. Here the recent record is troubling. An internal FBI study that was released at the Committee's July hearing found a double standard at work, with senior FBI executives receiving a slap on the wrist for the same kind of conduct that would result in serious discipline for lower level employees. The most vivid example occurred when seven Senior Executives submitted false travel vouchers to they could fly to Washington for the retirement dinner of a Deputy Director. They received only letters of censure for a voucher fraud offense that could cost an average Agent his or her career. Two of them actually received promotions and cash awards. In another case, the argument was asserted within the Justice Department that the FBI Director may not be disciplined because he is a Presidential appointee and that, in any event, the FBI Director should not be disciplined for exercising poor judgment. This argument conflicts with the basic principle that all public officials should be held equally accountable.

In his opening statement, Mr. Mueller said it is "very important that there be no double standards in accountability. I know there have been allegations that senior FBI officials are sometimes treated more leniently than more junior employees. Any such double standard would be fundamentally unfair and enormously destructive to employee morale. If anything, senior FBI officials should be held to a higher standard than other employees,

for, after all, they should serve as an example. I commit to this committee, to the employees of the FBI, and to the American people that there will be no such double standard should I become director of the FBI."

In response to my questions, Mr. Mueller put even greater emphasis on appointing "leaders in the FBI who are held to a higher standard" because they "serve as example for others in the FBI."

During the confirmation hearings, Committee members raised issues regarding the scope and methods of FBI investigations.

Senator FEINGOLD asked if the nominee was willing to consider requiring FBI agents to record interviews electronically, a practice consistent with the practice of many law enforcement agencies around the country. Mr. Mueller said that he would and that the FBI no longer has a "hard and fast rule" against it. Interviews may be recorded with the approval of the Special Agent in Charge. While working homicides in the District of Columbia, Mr. Mueller saw "the advantage of the use of recording interviews." However, given the thousands of FBI interviews conducted daily including background investigations, he thought it would be "counterproductive to require recording and transcribing all such interviews." The FBI "will continue to look at it, particularly in an instance where it is important that a confession or critical evidence relating to a terrorist attack needs to be deciphered accurately with no room for error."

Senator FEINGOLD also expressed concern about the FBI's difficulty distinguishing between peaceful political dissent and criminal activity in the past and possibly in the targeting of Arab Americans today. He asked what steps Mr. Mueller would take to ensure that the Bureau does not infringe on fundamental First Amendment rights and restricts itself to investigating only criminal activity. Mr. Mueller replied that he does "share the concern." Citing his experience in criminal investigations, he said he "would insist that whenever we are undertaking an investigative enterprise, that there be adequate predication for the steps we take to pursue that investigation." He also said he would address the problems of "span of control" and the FBI's computer infrastructure in order to "have transparency of information all the way to the top." This would "provide the oversight necessary" to assure that "predication is being looked at, demonstrated, before a particular important investigation is going forward or a class of investigation is going forward."

Senator SPECTER raised the issue of FBI agents asking someone who has been arrested if they have information about some other person who is a public figure, with the suggestion that the case against the individual under arrest will go easier if that individual is able to identify somebody who is well

known. Mr. Mueller responded that "a general targeting, without predication, is anathema to the Bureau, and to the extent that any incident such as that comes to the attention of the Director, it should be dealt with firmly."

Senator CANTWELL raised a privacy concerns, which I share, about the FBI's Carnivore system, or DCS-1000, and new technologies such as a key logger system. Mr. Mueller said he was sensitive to those concerns and had talked with a number of privacy groups when he was Acting Deputy Attorney General. Asked by Senator CANTWELL to review Carnivore, Mr. Mueller said the Justice Department is conducting such a review and he would look at it when it is completed.

The Fourth Amendment must be kept up to date in response to new and emerging surveillance technologies. This is an issue about which I alerted Mr. Mueller that the FBI should anticipate increased oversight from the Judiciary Committee and increased concern on both sides of the aisle. I asked the nominee to look at the procedures in place for law enforcement access to electronic information because so much of it is stored in the hands of third parties. Our aim should be to make sure that privacy is properly protected in the electronic age, whether it is a keystroke, thermal imaging, or dealing with the proliferation of small companies that hold our data. Mr. Mueller agreed to do so, observing that "there are issues where there is a law enforcement tool, there are privacy interests implicated, and yet one doesn't know where the line is."

Privacy interests are also implicated by the Attorney General's decision to cut-back on the retention of records of gun sales to legitimate gun owners. Mr. Mueller initially acknowledged that this decision "could" subvert the FBI's effort to keep guns out of the hands of criminals and go after the bad dealers, but noted that he was "not familiar with the debate or what evidence there is, what study there has been of the impact of the change, but, yes, it could." Mr. Mueller accepted my invitation to work with members of the Committee and the Attorney General to ensure that the National Incident Criminal Background Check System maintains an accurate auditing system, but also protects the legitimate rights of gun owners.

The FBI has long been considered the crown jewel of law enforcement agencies. Today, it has lost some of its earlier luster. The next FBI Director has both a great challenge and a great opportunity to restore public confidence in the Bureau, and the Judiciary Committee stands ready to help. The Committee needs to forge a strong and constructive oversight partnership with the leadership at the Department of Justice and the FBI to shape the reforms and find the solutions to make the FBI the premier law enforcement agency that the American people want and expect it to be.

Robert Mueller seems well prepared to meet this challenge and take advantage of this opportunity as the next Director of the FBI. With a statutory ten-year term, the position of FBI Director is unique in our government, and confirmation of a nominee to that position is an exceptionally serious responsibility for the Senate.

With full consciousness of that responsibility, I urge my colleagues to confirm the nomination of Robert S. Mueller, III, to be Director of the Federal Bureau of Investigation.

Mr. HATCH. Madam President, I am very pleased that the Senate will vote today on the confirmation of three excellent nominees for high office.

The nomination of Robert Mueller to be FBI Director is particularly significant. I consider the FBI to be one of the most important agencies of the Government, and the post of FBI Director to be one of the most consequential in the world. The FBI Director is trusted to command huge resources that touch the lives of people around the globe. He is charged with protecting the most important resource in America—our people. And the Director holds a term—10 years—that exceeds that of any elected Federal representative. The Director thus has great power and great insulation from the popular will—a combination that requires this body to be especially vigilant in its confirmation review. But after examining Bob Mueller's record, meeting with him privately, listening to many people who know him, and questioning him at the Judiciary Committee hearing earlier this week, I am extremely confident that President Bush has chosen the right person for this position. Mr. Mueller has the judgment, integrity and dedication to purpose that will make him an excellent FBI Director.

I will mention two things about Mr. Mueller that particularly strike me on his long list of professional accomplishments. The first is his military record. For his service as a Marine during the Vietnam war, Mr. Mueller was awarded the Bronze Star, 2 Navy Commendation Medals, the Purple Heart, and the Vietnamese Cross of Gallantry. The second particularly notable item is that in 1995, after 2 years as a senior partner in the distinguished firm of Hale and Dorr, Mr. Mueller left to become a regular, line prosecutor in the homicide section of the District of Columbia's U.S. Attorney's Office. This was after he had served as the head of the Criminal Section in the Department of Justice and in other high offices. This speaks volumes about Mr. Mueller's character, values, and commitment to public service.

Of course, Mr. Mueller will need to muster all his skill and experience to execute his new assignment. He will step into the FBI at a time of some disruption caused by several high-profile embarrassments. But he will have the inheritance of former Director Louis Freeh's tremendous work, and he will be supported by the Bush administration and Attorney General Ashcroft in

particular. I hope he has support from Congress as well. We should be careful to act in ways that encourage positive change at the FBI and avoid distracting the bureau from its mission.

I again applaud President Bush for his choice of Bob Mueller to be FBI Director. I have every confidence that he will prove to be an excellent leader and a force for positive change at the FBI.

Madam President, I urge my colleagues to vote to confirm the President's nominee, Mr. Mueller.

Mr. GRASSLEY. Madam President, I rise to support the nomination of Robert Mueller to be the Director of the FBI. I also want to thank my friend, the chairman of the Judiciary Committee, for holding a hearing and a committee vote on Mr. Mueller's nomination this soon after President Bush's forwarding of Mr. Mueller's nomination to the Senate. It is my hope that when we return from summer recess, we will be able to keep the same pace with President Bush's many other critical nominees.

Mr. Mueller will have a big job in front of him as the new Director of the FBI. The Bureau is plagued with culture problems which have eroded the public's confidence in their ability to effectively investigate crime and apprehend criminals. The senior management of the FBI has fostered a culture of arrogance that has produced abuse of power and coverup. The FBI has been embarrassed time and again by the misconduct of its senior management. First there were the tragedies at Waco and Ruby Ridge. The FBI retaliated against Dr. Fred Whitehurst after he blew the whistle on the FBI crime labs. There was also the botched investigation into the Wen Ho Lee matter and the FBI's failure to turn over evidence to the defense in the Timothy McVeigh trial.

As an ardent advocate of FBI reform, what often gets lost in my comments is the respect that I have for the thousands of men and women serving their country as FBI employees. My criticisms of the FBI's management culture should in no way minimize the great sacrifices that our honest and hardworking FBI agent and support personnel make every day for our country. But these men and women, as well as the American people, deserve a law enforcement organization that has integrity and credibility. The FBI management system is broken, and this does a real disservice to the hardworking agents on the street.

Mr. Mueller and I met in my office a few weeks ago to discuss this culture of arrogance and his plans for reform. In the three short weeks since that meeting, the FBI's culture of arrogance has continued to raise its ugly head. Just a week after the meeting, the national papers were filled with headlines that the FBI couldn't find its guns. The FBI has lost or had stolen from them 440 firearms and 171 laptop computers. The Inspector General is currently conducting an investigation to determine

the extent of the damages, but we do know that one of the lost guns was used in the commission of a homicide and at least one of the laptops contained classified information about two espionage cases.

A day after that revelation, four senior FBI agents testified before the Judiciary Committee that the Bureau has dual standard for the disciplining of employees. According to these men, Senior Executive Service employees are given slaps on the wrists for their infractions, while the rank and file agents are often punished to the letter of the law.

Most recently, last Thursday, the public saw a good example of how some SES employees abuse their power: The Washington Times reported that a group of FBI managers staged a conference entitled "Integrity in Law Enforcement" that we merely a sham and a cover, so that senior FBI managers could obtain improper reimbursements for traveling to a retirement party for veteran agent Larry Potts. The Washington Times further reported that "no one was disciplined other than to receive letters of censure." This lack of discipline directly counters the letter of the law. In 1994, Director Freeh issued a "Bright Line" memo dictating that voucher fraud and the making of false statements would result in dismissal. Had the rank and file done this, they would have been fired.

These most recent FBI blunders are further eroding public confidence that the FBI is up to the task their Nation has called upon them to do.

But, not all the news is bad. In the weeks since our meeting, the Attorney General has issued an order to enlarge the jurisdiction of the Department of Justice Office of Inspector General. The Inspector General will not have primary jurisdiction over allegations of misconduct against employees of the FBI and DEA. This is an important and encouraging step toward overall FBI reform. I hope it will help to solve the problems that the FBI has with their management culture. Previous to this, the Inspector General could not initiate an investigation within the FBI or DEA, without expressed permission from the Deputy Attorney General. I have been saying for many years that the FBI should not be allowed to police itself, and I am encouraged by this new step toward the establishment of a free and independent oversight entity. Along these same lines, Senator Leahy and I will soon be offering a bill to make permanent what the Attorney General's Order accomplished regarding oversight of the Bureau and the reporting of misconduct by FBI employees. This bill is critical to having lasting reform.

In order for a true change in the FBI's management culture to occur, there must be vigorous oversight by an independent IG, as well as by the Congress. With the Attorney General's order and the work of the Senate Judiciary Committee, there will be over-

sight. But, there must also be a strong leader known for honesty and integrity at the helm of the Bureau. Mr. Mueller has sterling credentials and a great deal of experience. He has also impressed me with his history of reform while the U.S. Attorney for San Francisco. A similar overhaul is needed at the FBI. However, I'm concerned that Mr. Mueller still doesn't fully comprehend the culture problems that exist at the FBI. As the new Director, he must be committed to fundamentally changing the Bureau's management culture.

That being said, I am supporting Mr. Mueller's nomination. Based on this responses to the concerns that I have raised with him, the commitments he has made to reform the culture of the FBI, as well as the many recommendations he has received in support of this nomination, I trust that he will be able to institute the much needed reform of the FBI's management culture. I will be voting to confirm Mr. Mueller to be director of the FBI.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I have sought recognition to comment on the confirmation of Robert Mueller to be Director of the FBI and to comment about the hearings which were very important in establishing standards for congressional oversight.

Mr. Mueller brings outstanding credentials to the position of Director of the FBI: an excellent academic background, an excellent professional background, served as U.S. attorney in Boston, as U.S. attorney in San Francisco, as Assistant Attorney General in charge of the Criminal Division, earlier this year was acting Deputy Attorney General.

One of the things he did which I found enormously impressive was while in private practice in a very lucrative context, he called up the U.S. attorney for the District of Columbia and asked for a job trying homicide cases. That was after he had been Assistant Attorney General for the Criminal Division. That was his devotion to public service and his devotion to law enforcement and his devotion to prosecution.

I found that unique based on my own experience as an assistant district attorney before becoming D.A. of the city of Philadelphia. People ask me from time to time what my favorite job was. It is not Senator or D.A., but assistant D.A. where you really get into the courtroom and try so many cases. He brings an outstanding background to this very important and very difficult job.

Arguably, the Director of the FBI is the most powerful man in America. I say that because the Director has a 10-year statutory term. The most the President of the United States can serve is two 4-year terms for a total of 8 years. What the President does is subject to considerable public scrutiny, unlike the record of the FBI where

most of its work is done on a confidential basis and in secret. So it is a very powerful position.

Mr. Mueller comes to this job with a very troubled Federal Bureau of Investigation. Recognizing that and the problems they have had with the crime laboratory and the Hanssen case and Waco and Ruby Ridge, they have also had tremendous successes. They have had successes on the Unibomber, the Trade Center bombings, the Embassy terrorist attacks, Khobar Towers, and many successful actions thwarting terrorist attacks which are not publicized.

When a mistake is made by a public official or by an agency like the FBI, they are plastered across the front pages. Their successes are not noted. Many of them are confidential so their informants and sources are not disclosed. While it is a troubled agency, it is still a very fine agency. It has performed investigative service for the United States. The FBI responsibilities have increased enormously in the last few years, fighting organized crime overseas and international terrorism.

I think Director Freeh did as good a job as could be done under very difficult circumstances. I analogize Director Freeh to the story of the Dutch boy who is trying to keep the water from coming through the dyke. He runs around and sticks his finger in the holes of the dyke. No matter how many holes he plugs up with his fingers, more water comes in. That was a problem Director Freeh had. I think overall he did as good a job as could be done under the circumstances.

Notwithstanding that overall evaluation, I do believe there were very serious shortcomings in the responsibility of the FBI and by Director Freeh to congressional oversight. I believe the oversight function is an enormously important function; Congress has to oversee the way our appropriations are spent and oversee the way the executive branch functions. We have not done enough in that regard. We did not do the oversight necessary in Waco where there was the incident on April 19, 1993. No one can establish cause and effect, but chances are good that had there been effective oversight immediately after the Waco incident, that the Oklahoma City bombing would not have occurred 2 years to the day on April 19 of April 1995. It took until 1999 with the inquiry by former Senator Danforth to do appropriate oversight there.

This Senator tried hard in mid-1995 to pursue oversight as to Waco and as to Ruby Ridge. Finally, we did have hearings on Ruby Ridge. That was an example of effective congressional Senate oversight. I had the opportunity to chair that subcommittee. It is not just my view but a widespread view. Randy Weaver was on the mountain at Ruby Ridge and a virtual army went out to bring him off the mountain. The results were disastrous. The U.S. Marshal, Marshal Degan, was killed. Randy Weaver's wife, Vicki, was killed. Randy

Weaver's son, Sammy Weaver, age 14, was killed in a gunfire fight.

The FBI finally conceded they had violated the constitutional standards in use of deadly force on their rules of engagement. It took a Senate oversight hearing to bring that out and to get that matter corrected. Regrettably, to this day, Ruby Ridge was a 1992 incident and the Senate Judiciary Committee worked in 1995 and published a report in December. To this day, that matter is still under investigation with substantial reason to believe there has not been appropriate action taken by way of discipline.

One of the things Mr. Mueller committed to do was to revisit that situation.

The oversight function is a matter which our Judiciary Committee has not pursued, as I stated. I had the opportunity to chair a subcommittee on Department of Justice oversight in 1999 and in the year 2000. In the course of that oversight inquiry, when we were investigating campaign finance reform and sought to get a report made by Charles Labella, who came in as a special assistant. We could never get the report, even though the Department of Justice had a duty to provide it to the Judiciary Committee on oversight. When we finally issued a subpoena for the Labella report in April of the year 2000, we did obtain the report.

At that time, we obtained another document which classifies as a dynamite document which should have been turned over to the FBI long before. This is a memorandum dated December 9, 1996. I ask unanimous consent the text of this memorandum be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit No. 1)

Mr. SPECTER. This memorandum, dated December 9, 1996, is from Director Freeh to one of his top deputies, Mr. Esposito. It relates to a conversation which Mr. Esposito had with a top-ranking official in the Department of Justice named Lee Radek of the Public Integrity Section.

The kernel of the memorandum is contained in paragraph 4 which I will now read:

I also advise the Attorney General of Lee Radek's comment to you that there was a lot of "pressure" on him and PIS, Public Integrity Section, regarding this case [and that refers to the Democratic national campaign matter which is the caption of the memorandum] because the "attorney General's job might hang in the balance" or words to that effect.

Now, this conversation between Mr. Esposito and Mr. Radek occurred in December of 1996 at the precise time when President Clinton had not stated whether he would reappoint Attorney General Reno. There was an enormous furor over the issue of campaign finance irregularities. The Governmental Affairs Committee conducted an extensive investigation in 1996.

Now, had this memorandum been disclosed, as I think it should have been,

and had the Senate known a top Department of Justice official was going easy on this investigation because of protecting the Attorney General's job, the demands for independent counsel might have come out entirely differently. That was a major matter.

When I saw this memorandum in December of the year 2000, I told Director Freeh I thought he had an absolute duty to have turned over this memorandum contemporaneously with the event, and he disagreed, saying it would have destroyed his relationship with the Attorney General—and his relationship had a lot of problems, in any event. I admired Director Freeh for his taking a stand that independent counsel should have been appointed, and in many respects he did act in a courageous way on that particular subject. But this memorandum was dynamite. By the time it came up in the year 2000, it was a cold potato, it was an old matter.

I said to Director Freeh that he must testify about this issue, and he said he wouldn't do so. To my chagrin, I could not get a subpoena from the Judiciary Committee to compel Director Freeh's attendance and testimony.

We did bring in Mr. Esposito and we did bring in Mr. Radek, put them both under oath and had them testify, and they told contradictory versions. Mr. Radek said, well, he had made a comment about pressure and he had made a comment about the Attorney General's job hanging in the balance, but there was no connection between the two. That is set out fully in the record and can be reviewed by anyone who cares to do so, to evaluate the credibility of Mr. Radek in saying that—although he had said there was a lot of pressure and he said the Attorney General's job hung in the balance, that there was no connection between the two.

When Attorney General Reno testified 3½ years after the fact, she said she didn't recall any such conversation with FBI Director Freeh but if it had occurred, she was sure she would have taken some action. But, as I say, at that point it was totally stale, not subject to any real investigation or congressional oversight on that point.

Before the confirmation hearing with Mr. Mueller, I met with him for the better part of an hour in my office and went over that memorandum and other matters about which I had questioned him. During the course of his testimony on Monday, 3 days ago, when I asked him if that was the kind of a memorandum which ought to have been disclosed, he was equivocal. He was equivocal about a number of other matters. At the suggestion of the chairman that Bob Mueller and ARLEN SPECTER sit down, we did Tuesday morning in my office for the better part of an hour. And when he resumed his testimony on Tuesday, he said that that memorandum from Director Freeh should have been made a part of the record, that that was appropriate congressional oversight and it should have

been disclosed. I consider that important because we really have to establish standards as to what Mr. Mueller will do as FBI Director and what is appropriate congressional oversight.

Another matter that I had discussed informally with Mr. Mueller before the confirmation hearing, and then questioned him about during the confirmation hearing, was the issue of the obligation of the FBI, of the Department of Justice, to submit to congressional oversight on pending criminal investigations and on pending criminal prosecutions. I cited to Mr. Mueller a summary of the law which appeared in Congressional Research.

During the course of my questioning of Mr. Mueller on Monday afternoon of this week, I had asked him about his recognition of the authority of Congress to have the last word on oversight, and to have access to pending FBI investigations and pending FBI prosecutions. At that time, I read to him extracts from the Congressional Research Service which summarized the law on the subject in a publication dated April 7, 1995, as follows:

... a review of congressional investigations that have implicated the Department of Justice or the Department of Justice investigations over the past 70 years, from the Palmer Raids and Teapot Dome to Watergate and through Iran-Contra and Rocky Flats, demonstrates that the Department of Justice has been consistently obligated to submit to congressional oversight regardless of whether litigation is pending so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in the Department of Justice or elsewhere.

Skipping some:

In all instances, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews memoranda.

Another facet of the same report:

In the majority of instances reviewed, the testimony of subordinate Department of Justice employees, such as line attorneys and FBI field agents, was taken formally or informally and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases.

In my questioning of Mr. Mueller on Monday afternoon, he was equivocal about his recognition of those legal principles. As I say, we had a meeting in my office for the better part of an hour Tuesday morning at the suggestion of the chairman. During that time, we came to a meeting of the minds, as we had on the memorandum of December 9, 1996, so that when Mr. Mueller testified on Tuesday afternoon, he did say that it was appropriate for Congress to inquire as a matter of oversight into pending criminal investigations, so that he agreed with the language of the Congressional Research Service and did agree that, in the final analysis, Congress had the last say as to what was appropriate for congressional oversight.

There was a bit of qualification when he talked about appropriate cases. Of

course, there has to be responsibility in what the Congress asks for. But when the Congress presses it, the law is established that if it ends a criminal prosecution because Congress believes the oversight is warranted for legislation, then Congress has the paramount authority.

I discussed with Mr. Mueller the frustration of congressional oversight in the Wen Ho Lee case, which was illustrative of Congress really not doing sufficient oversight and the intransigence and noncompliance by the Federal authorities.

The Wen Ho Lee case was a matter under investigation really for decades. To this day, we do not know whether Dr. Wen Ho Lee was a major spy or was a victim of overreaching by the FBI and the Department of Justice.

The case came to a head in August of 1997, when FBI Director Freeh sent one of his top deputies to talk personally with Attorney General Reno to request a warrant under the Foreign Intelligence Surveillance Act.

Attorney General Reno delegated that authority to someone who had no experience in the field, and ultimately the warrant was turned down. And there was no followup by either Attorney General Reno or FBI Director Freeh. That resulted last year in legislation, so that it is now a statutory obligation. When the FBI Director makes a request, the Attorney General has an obligation to respond in writing, and the FBI Director has an obligation to follow up personally.

The Wen Ho Lee case then languished for 16 months until December of 1998, when it was reinvigorated because the Cox commission was about to come out with a report from the House of Representatives highly critical of the Department of Energy and the Department of Justice, including the FBI. At that time, Department of Energy Secretary Richardson initiated a polygraph of Wen Ho Lee conducted by a private agency, which was reported to have cleared Wen Ho Lee of complicity, saying he passed the polygraph. It was later held in question and later discredited. Meanwhile, Dr. Lee had continuing access to highly classified information.

Finally, the FBI proceeded with a search warrant in April of 1999 and then waited until December of 1999 before indicting Wen Ho Lee and arresting him. At that time, they manacled him and held him in solitary confinement, with no explanation ever forthcoming as to why he could stay at large for months and months and months and then be worse than public enemy No. 1.

During that period of time, a Judiciary subcommittee with oversight of the Department of Justice was proceeding to try to get records and documents and, significantly, without success. Our efforts are summarized, and there are many letters, but this one is illustrative, dated November 30, from me to Director Freeh saying:

I am very much concerned about the repetitive problem that the FBI fails to produce records and that they are then discovered at a much later date.

I know you will recall the incident in September 1997 when the CIA advised the Government Affairs Committee of certain information in FBI files concerning foreign contributions which the FBI had not disclosed.

That one was a very vituperative hearing where the FBI had not turned over the information and the CIA came forward and told us what was in the FBI files. Then the FBI belatedly conceded that it was in fact in their files.

My letter to Director Freeh of November 30 goes on:

By letter dated November 24, 1999, I wrote asking for an explanation about the failure of the FBI to turn over records pursuant to subpoenas in the Ruby Ridge hearings.

We had no response there.

Going on:

With respect to Waco, there has been a series of belated disclosures. Last August, it was disclosed that incendiaries were fired at the compound contrary to Attorney General Janet Reno's previous testimony. Shortly thereafter, the FBI discovered extensive documents in Quantico which had not been previously disclosed. A few days ago, the press reported another incident where the FBI found documents long after they were supposed to have been produced, some four days after Department of Justice attorneys had advised a Federal Judge in Waco that there were no such records.

The Department of Justice has recently advised that Attorney General Reno's testimony before the Judiciary Committee on June 8, 1999 was incomplete because she did not have access to certain FBI records.

The letter goes on and on.

I ask unanimous consent, instead of reading it at length, that it be printed in the RECORD at the conclusion of my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SPECTER. I am not unaware that this is a somewhat lengthy statement, but believe me, it is a short summary of efforts made to find out what was going on in the Wen Ho Lee investigation and where we were being stonewalled by the FBI. Had we had access to these records and had we conducted the oversight, we would have perhaps been able to correct some of the serious errors which were in process.

Another illustrative letter was from me to Director Freeh dated January 3, 2000. I will read only one paragraph.

I am writing to renew my request—which was first made in writing on September 29, 1999—for access to the ten pieces of intelligence information referred to in the July 1999 Inspector General's Special Report on the Handling of FBI Intelligence Information. . . .

Then a note:

We have been waiting for the 10 pieces of intelligence information for an unreasonably long time.

Again, I ask unanimous consent that the full text of the letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. SPECTER. Then the Department of Justice accepted a guilty plea from Dr. Wen Ho Lee on 1 count of 59 counts and then was thoroughly chastised by the Federal judge for the way they had conducted the investigation.

Then Dr. Lee was debriefed, and we are still waiting for answers from the FBI as to what has occurred in the case going up to August of 2001 on an oversight which has been in process for years.

I talk about this at some length because of the importance of the Judiciary Committee pursuing this oversight and finding out what is going on in the FBI. We have a very significant advance made on a recognition by Mr. Mueller, who will be sworn in as Director of the FBI, that the Congress has a right to pending FBI investigations and to pending FBI prosecutions.

They can't hide behind the assertion that, well, it is confidential and subject to investigation or subject to prosecution.

The hour is growing late. One other matter I want to put on the record at this point is the issue on which I questioned Mr. Mueller about the leaks on the alleged investigation into Senator ROBERT TORRICELLI. As I said to Mr. Mueller at the hearing on Tuesday afternoon, the day before yesterday, all I know about that is what I read in the newspaper. But I had written to Director Freeh back on June 8 of this year, saying:

I am interested to know whether you have initiated any investigation on the leaks which have appeared in the press concerning an alleged investigation of Senator Bob Torricelli; and, if so, what that investigation has disclosed.

As I said Tuesday, and repeat today, I haven't gotten an answer to the letter. I asked Mr. Mueller for a commitment that he would investigate to see what had happened because of the devastating nature of this leak. But this leak is one of many. The papers have been filled with stories about Dr. Wen Ho Lee and many other matters. But we have a commitment from the Director to respond on the Torricelli matter.

Briefly, in conclusion—the two most popular words of any speech—I comment about the problems in the FBI, but I do acknowledge, as I did at the outset, that I believe the FBI is a very important and good investigative organization, and that we find the errors, we find the difficulties, and they are publicized. But I do believe that the Senate is at fault, the Congress is at fault in not pursuing oversight. It is a very tough thing to do because you have to make the request repeatedly and you have to insist on it and you have to follow up on it. When we will have a Director who concedes that Congress is entitled to information on pending investigations and pending prosecutions, then we know where we ought to head.

## EXHIBIT 1

DECEMBER 9, 1996.

## MEMORANDUM

To: Mr. Esposito.  
From: Director, FBI.  
Subject: Democratic National Campaign Matter.

As I related to you this morning, I met with the Attorney General on Friday, 12/6/96, to discuss the above-captioned matter.

I stated that DOJ had not yet referred the matter to the FBI to conduct a full, criminal investigation. It was my recommendation that this referral take place as soon as possible.

I also told the Attorney General that since she had declined to refer the matter to an Independent Counsel it was my recommendation that she select a first rate DOJ legal team from outside Main Justice to conduct the inquiry. In fact, I said that these prosecutors should be "junk-yard dogs" and that in my view, PIS was not capable of conducting the thorough, aggressive kind of investigation which was required.

I also advised the Attorney General of Lee Radek's comment to you that there was a lot of "pressure" on him and PIS regarding this case because the "Attorney General's job might hang in the balance" (or words to that effect). I stated that those comments would be enough for me to take him and the Criminal Division off the case completely.

I also stated that it didn't make sense for PIS to call the FBI the "lead agency" in this matter while operating a "task force" with DOC IGs who were conducting interviews of key witnesses without the knowledge or participation of the FBI.

I strongly recommended that the FBI and hand-picked DOJ attorneys from outside Main Justice run this case as we would any matter of such importance and complexity.

We left the conversation on Friday with arrangements to discuss the matter again on Monday. The Attorney General and I spoke today and she asked for a meeting to discuss the "investigative team" and hear our recommendations. The meeting is now scheduled for Wednesday, 12/11/96, which you and Bob Litt will also attend.

I intend to repeat my recommendations from Friday's meeting. We should present all of our recommendations for setting up the investigation—both AUSAs and other resources. You and I should also discuss and consider whether on the basis of all the facts and circumstances—including Huang's recently released letters to the President as well as Radek's comments—whether I should recommend that the Attorney General reconsider referral to an Independent Counsel.

It was unfortunate that DOJ declined to allow the FBI to play any role in the Independent Counsel referral deliberations. I agree with you that based on the DOJ's experience with the Cisneros matter—which was only referred to an Independent Counsel because the FBI and I intervened directly with the Attorney General—it was decided to exclude us from this decision-making process.

Nevertheless, based on information recently reviewed from PIS/DOC, we should determine whether or not an Independent Counsel referral should be made at this time. If so, I will make the recommendation to the Attorney General.

## EXHIBIT 2

U.S. SENATE,

COMMITTEE ON THE JUDICIARY,

Washington, DC, November 30, 1999.

Director LOUIS FREEH,  
Federal Bureau of Investigation,  
Washington, DC.

DEAR DIRECTOR LOUIS FREEH: I am very much concerned about the repetitive prob-

lem that the FBI fails to produce records and that they are then discovered at a much later date.

I know you will recall the incident in September 1997 when the CIA advised the Governmental Affairs Committee of certain information in FBI files concerning foreign contributions which the FBI had not disclosed.

By a letter dated November 24, 1999, I wrote asking for an explanation about the failure of the FBI to turn over records pursuant to subpoenas in the Ruby Ridge hearings.

With respect to Waco, there has been a series of belated disclosures. Last August, it was disclosed that incendiaries had been fired at the compound, contrary to Attorney General Janet Reno's previous testimony. Shortly thereafter, the FBI discovered extensive documents in Quantico which had not been previously disclosed. A few days ago, the press reported another incident where the FBI found documents long after they were supposed to have been produced, some four days after the Department of Justice attorneys had advised a Federal Judge in Waco that there were no such records.

The Department of Justice has recently advised that Attorney General Reno's testimony before the Judiciary Committee on June 8, 1999 was incomplete because she did not have access to certain FBI records.

Similarly, Mr. Neil Gallagher has sought to correct his testimony before the Governmental Affairs Committee on June 9, 1999 because he was not aware of certain FBI documents when he testified.

On the eve of our Judiciary Subcommittee hearing on Wen Ho Lee on November 3, 1999, we were given important documents at the last minute which have been in the FBI files since December 19, 1997 and December 10, 1998.

These are only a few of the many instances where documents have been disclosed by the FBI long after they should have been made available. Would you please let me know why so many documents have been produced so late and what procedures you now have or are putting into place to prevent this from happening in the future. As I know you understand, every time we get late disclosures, we have to go back and retrace our inquiries. Of even greater importance is the issue of the reliability of FBI responses to our document requests.

I would appreciate a response as promptly as possible so that we can proceed.

Sincerely,

ARLEN SPECTER.

EXHIBIT 3

U.S. SENATE,

Washington, DC, January 3, 2000.

Hon. LOUIS J. FREEH,  
Director, Federal Bureau of Investigation,  
Washington, DC.

DEAR DIRECTOR FREEH: I am writing to renew my request—which was first made in writing on September 29, 1999—for access to the ten pieces of intelligence information referred to in the July 1999 Inspector General's Special Report on the Handling of FBI Intelligence Information Related to the Justice Department's Campaign Finance Investigation, and any analysis regarding the validity of such information and its suitability for use in a prosecution or relevance to a plea agreement. These ten pieces of information are covered by the November 17, 1999, resolution of the Judiciary Committee, which authorized a number of subpoenas.

I would also appreciate your assistance in ensuring that the background check and clearance request for my Chief Counsel, Mr. David Brog, it processed in an expeditious manner.

Both of these matters are important for the Judiciary subcommittee which I chair to be able to conduct its oversight in a prompt and thorough manner.

Sincerely,

ARLEN SPECTER.

Mr. SESSIONS. Madam President, I served on the subcommittee on oversight effort on the FBI and the Department of Justice. I thought if the American people had seen that, they would have known that he was committed to getting to the truth, as he is always, and that there was, indeed, vigorous oversight at least with regard to those aspects of the FBI and the Department of Justice.

Nobody is perfect. Everybody makes mistakes. But it is our duty to ask tough questions and insist on excellence. I am a big fan of the FBI, but they are not perfect. I am a big fan of the Department of Justice, but they are not perfect. Senator GRASSLEY and Senator SPECTER have been tough on them and demanded excellence, and I respect that. I think it is very healthy. I believe that Bob Mueller, who I knew at the Department of Justice for many years, is a professional's professional, who is a tough leader with the kinds of insight into the FBI's strengths and weaknesses that would allow him to have a unique opportunity to make a positive change.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Robert S. Mueller, III, of California, to be Director of the Federal Bureau of Investigation? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUE) is necessarily absent.

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) is absent because of a death in family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 272]

YEAS—98

|           |            |             |
|-----------|------------|-------------|
| Akaka     | Craig      | Inhofe      |
| Allard    | Crapo      | Jeffords    |
| Allen     | Daschle    | Johnson     |
| Baucus    | Dayton     | Kennedy     |
| Bayh      | DeWine     | Kerry       |
| Bennett   | Dodd       | Kohl        |
| Biden     | Dorgan     | Kyl         |
| Bingaman  | Durbin     | Landrieu    |
| Bond      | Edwards    | Leahy       |
| Boxer     | Ensign     | Levin       |
| Breaux    | Enzi       | Lieberman   |
| Brownback | Feingold   | Lincoln     |
| Bunning   | Feinstein  | Lott        |
| Burns     | Fitzgerald | Lugar       |
| Byrd      | Frist      | McCain      |
| Campbell  | Graham     | McConnell   |
| Cantwell  | Gramm      | Mikulski    |
| Carnahan  | Grassley   | Miller      |
| Carper    | Gregg      | Murkowski   |
| Chafee    | Hagel      | Murray      |
| Cleland   | Harkin     | Nelson (FL) |
| Clinton   | Hatch      | Nelson (NE) |
| Cochran   | Helms      | Nickles     |
| Collins   | Hollings   | Reed        |
| Conrad    | Hutchinson | Reid        |
| Corzine   | Hutchison  | Roberts     |

|             |            |            |
|-------------|------------|------------|
| Rockefeller | Smith (OR) | Thurmond   |
| Santorum    | Snowe      | Torricelli |
| Sarbanes    | Specter    | Voinovich  |
| Schumer     | Stabenow   | Warner     |
| Sessions    | Stevens    | Wellstone  |
| Shelby      | Thomas     | Wyden      |
| Smith (NH)  | Thompson   |            |

NOT VOTING—2

Domenici Inouye

The nomination was confirmed.

Mr. LEAHY. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I thank the distinguished majority leader and Members on both sides of the aisle for arranging to expedite the scheduling of these three votes. As I said to the Senator from Nevada, the majority whip, it is extremely important that we were able to move especially Bob Mueller as quickly as we did.

I thank the leadership for making this possible, and I thank all Senators on both sides of the aisle for voting for him. It sends a strong signal. We have somebody who wants to preserve the very best of the FBI and to correct those areas where there are problems. I think he can do both. He comes with a strong mandate from the Senate, and that will help.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Madam President, I compliment the distinguished chairman of the Judiciary Committee for his expeditious work on these nominations and so many others. We have broken some records. His work and determination demonstrate real fairness and ensure these people have the opportunity to serve at the earliest possible date. His willingness to do that and his desire to work with the leadership are very much appreciated. I want to commend him publicly for that.

Mr. LEAHY. I thank the Senator.

LEGISLATIVE SESSION

JUDICIAL NOMINATIONS

Mr. LEAHY. Madam President, on July 20, I was pleased that we were able to confirm a number of judicial and executive nominations. We confirmed Judge Roger Gregory for a lifetime appointment to the United States Court of Appeals for the Fourth Circuit. Last year and earlier this year, he was unable even to get a hearing from the Republican majority.

Having gotten that hearing, his nomination was reported favorably to the Senate on a 19 to 0 vote by the committee and the Senate voted to confirm him by a vote of 93 to 1 vote. The supposed controversy some contend surrounded this nomination was either nonexistent or quickly dissipated. In

addition we have confirmed the two nominees to the District Court vacancies in Montana in order to help end the crisis in that district that was brought to our attention by Chief Judge Molloy.

Today we report and the Senate is confirming William Riley, nominated to the United States Court of Appeals for the Eighth Circuit. Mr. Riley was strongly supported by both his home State Senators, one a respected Republican and one a valued Democratic Senator.

In the entire first year of the first Bush Administration, 1989, without all the disruptions, distractions and shifts of Senate majority that we have experienced this year, only five Court of Appeals judges were confirmed all year.

In the first year of the Clinton Administration, 1993, without all the disruptions, distractions and shifts in Senate majority that we have experienced this year, only three Court of Appeals judges were confirmed all year. In 1993, the first Court of Appeals nominee to be confirmed was not until September 30. During recent years under a Republican Senate majority, there were no Court of Appeals nominees confirmed at any time during the entire 1996 session, not one. In 1997, the first Court of Appeals nominee was not confirmed until September 26.

Having confirmed our first Court of Appeals nominee on July 20, the Senate this year is ahead of the pace in 1993, the first year of the Clinton Administration, and ahead of the pace in 1996 and 1997, when the Senate was under Republican control.

A fair assessment of the circumstances of this year would suggest that the confirmation of a single Court of Appeals nominee this early in the year and the confirmation of even a few Court of Appeals judges in this shortened time frame of only a few weeks in session should be commended, not criticized. Today we confirm our second Court of Appeals nominee.

The Judiciary Committee held two hearings on two Court of Appeals nominees in July. In July 1995, the Republican Chairman held one hearing with one Court of Appeals nominee.

In July 1996, the Republican Chairman held one hearing with one Court of Appeals nominee, who was confirmed in 1996. In July 1997, the Republican Chairman held one hearing with one Court of Appeals nominee. In 1998, the Republican Chairman did hold two hearings with two Court of Appeals nominees, but neither of whom was confirmed in 1998. In July 2000, the Republican Chairman did not hold a single hearing with a Court of Appeals nominee.

During the more than 6 years in which the Senate Republican majority scheduled confirmation hearings, there were 34 months with no hearing at all, 30 months with only one hearing and only 12 times in almost six and one-half years did the Judiciary Committee